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Paper No. 10

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COPY MAILED

AUG 28 2006

OFFICE OF PETITIONS

In re Application of :
Sail Katta Reddy :
Application No. 09/955,671 : **DECISION ON PETITION**
Filed: 19 September, 2001 :
For: DOUGH PERFORATOR METHOD :
AND USE :

This is a decision on the petition filed on 10 January, 2006, under 37 CFR 1.137(b),¹ to revive the above-identified application.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The petition is GRANTED.

The application became abandoned on 28 October, 2002, for failure to timely reply to the Office action requiring restriction or election mailed on 27 September, 2002, which set a thirty (30) day shortened period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 5 May, 2003.

Petitioner states, *inter alia*, that "[t]he entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional."

The record does not necessitate a finding that the delay between 28 October, 2002, and 10 January, 2006, was not unintentional.

Rather, the Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply and until the filing of the petition was unintentional.²

Receipt of the paper entitled "ELECTION OF INVENTION TO BE EXAMINED" is acknowledged.

This application is being forwarded to Technology Center 1700 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

² See Changes to Patent Practice and Procedure 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying fact and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).